IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 9, 2006 Session

SABRINA SMITH v. CITY OF CHATTANOOGA, ET AL.

Appeal from the Chancery Court for Hamilton County
No. 02-0430 Howell N. Peoples, Chancellor

No. E2006-00635-COA-R3-CV - FILED DECEMBER 17, 2007

The employee brought this hostile work environment sexual harassment claim against her supervisor and employer, alleging the defendants violated the Tennessee Human Rights Act ("THRA"). At the close of the employee's proof in the jury trial, the trial court granted a directed verdict in favor of the supervisor and the employer. We vacate the trial court's directed verdict in favor of the employer because from the proof presented at trial, reasonable minds could differ on the issue of whether the employer established the affirmative defense set forth by the United States Supreme Court in the ***Faragher/Ellerth*** cases and recently restated by the Tennessee Supreme Court in ***Allen v. McPhee***.[1] We affirm the trial court's judgment that the supervisor was not individually liable under the THRA as an "aiding and abetting" accomplice because he did not encourage the employer to engage in employment-related discrimination or prevent the employer from taking corrective action.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Vacated in Part and Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR. and D. MICHAEL SWINEY, JJ., joined.

Michael A. Anderson, Chattanooga, Tennessee, for the Appellant, Sabrina Smith.

Michael A. McMahan and Phillip A. Noblett, Chattanooga, Tennessee, for the Appellee, City of Chattanooga.

W. Gerald Tidwell, Chattanooga, Tennessee, for the Appellee, Phillip Grace.

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[1] The Tennessee Supreme Court granted permission to appeal in the case of ***Allen v. McPhee***, No. M2005-00202-COA-R3-CV, 2006 WL 1328819 (Tenn. Ct. App. M.S., filed May 12, 2006), shortly after oral argument was heard in the present case. Because of the similarities between this case and ***Allen*** and the likelihood that the Supreme Court's pronouncements in that case would affect the disposition of the issues presented in the present case, we withheld our disposition of this case until a decision in ***Allen*** was rendered.

OPINION

I. Background

Because this is an appeal from the trial court's directed verdict, in keeping with the applicable standard of review, we are required to take the strongest legitimate view of the evidence favoring the opponent of the motion, the Plaintiff in this case, and the following factual background has been summarized accordingly. Sabrina Smith, an officer on the police force of the city of Chattanooga ("the City") filed a complaint alleging unlawful gender-based discrimination in the form of a sexually hostile work environment under the THRA. Officer Smith sued her employer, the City, and her supervisor, Sergeant Phillip Grace.

Officer Smith graduated from the police academy in March of 1999. After completing her field training, she was assigned to the Delta Team of Chattanooga's police force. Officer Smith started working on the first (day) shift, was transferred to the third (night) shift after a short time, and then transferred back to first shift after she requested a family hardship. Sgt. Grace supervised the officers of Delta Team. Officer Smith testified that she did not have any problems with Sgt. Grace at first, but that his attitude changed toward her after she got married. Officer Smith testified that Sgt. Grace would often take her off of her patrol duties and require her to do computer work such as data entry and report writing at the station. Sgt. Grace would often sit in the room with Officer Smith while she was working at the computer.

Officer Smith developed a close working relationship with another officer, Phillip Headden,[2] which she described as a "best friend" type relationship. Officer Headden was also married. Officers Smith and Headden would often have breakfast together while they were out on patrol. Sgt. Grace began referring to Officer Smith as Officer Headden's "girlfriend" and to Officer Headden as her "boyfriend." Sgt. Grace also accused Officers Smith and Headden of having an affair and told them that it was inappropriate to have breakfast together and to converse on a side channel of their police radios. Officer Smith testified that at this point, Sgt. Grace's complaints about her job performance also increased.

Officer Smith presented the testimony of Officer Marcus Easley, who had served on the police force about 20 years, and was on Delta Team with Officers Smith and Headden under Sgt. Grace. Officer Easley testified that none of the other officers were called in to enter data on the computer, that Sgt. Grace "quite often" referred to Officer Smith as "Headden's girlfriend," and that Sgt. Grace "very directly and bluntly told me that they [Smith and Headden] were having sex together." Officer Headden testified that Sgt. Grace called Officer Smith "Headden's girlfriend" and told him, in the presence of other officers, "I know you're f***ing her." Officer Smith stated that Sgt. Grace would make the "boyfriend" and "girlfriend" comments in morning lineup, sometimes when 4 or 5 other officers were present.

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[2] At some point in time Officer Headden was promoted to police detective. Because it appears that he was a patrol officer at this time, we refer to him as "Officer Headden" rather than "Detective."

Officer Smith filed a sexual harassment complaint against Sgt. Grace with the personnel office of the City on March 14, 2001. Sgt. Grace was immediately placed on administrative leave with pay. Both the City's personnel office and the Internal Affairs division of the police department conducted an investigation of Officer Smith's allegations. Following the investigations, the City transferred Sgt. Grace from Delta Team to George Team so that he was no longer supervising Officer Smith, who remained on Delta Team. Sgt. Grace was also ordered to attend a seminar on sexual harassment but was not disciplined in any other manner.

The George Team office was directly across the hall from the Delta Team office, and so the teams were in fairly close proximity to each other. Officer Smith testified that she told the personnel department that she wanted Sgt. Grace moved "away from me, not across the hall." She was made uncomfortable by the fact that "he was in the same building. I had to see him every day. There was an occasion once or – I'm wanting to say definitely once where he was my supervisor again, and seeing him intimidated me." Officer Smith stated that after Sgt. Grace moved to George Team, "it was hostile . . . I just felt hostility." The attitudes of several officers on the police force seemed to change after her complaint, and some treated her differently. After Sgt. Grace's transfer to George Team, however, there is no evidence that he spoke to or behaved in a harassing manner to Officer Smith again.

Officer Smith filed this cause of action on April 22, 2002. The case came on for a jury trial on October 4, 2005. At the close of Officer Smith's proof, the trial court granted each defendant's motion for a directed verdict. The trial court found that Officer Smith proved that Sgt. Grace subjected her to sexual harassment but that he could not be held individually liable because there was no proof that he "aided, abetted, incited, or compelled any other person to do anything after the sexual harassment claim was made that would be discriminatory under T.C.A. § 4-21-301 in the course of this investigation." The trial court granted the employer City a directed verdict pursuant to its finding that "supervisory officials of the plaintiff took appropriate and prompt corrective action after the complaint of sexual harassment was made known to City officials."

II. Issues Presented

Officer Smith appeals, raising the issues of whether the trial court erred in granting a directed verdict to the employer City and to the supervisor Sgt. Grace.

III. Analysis

A. Standard of Review

We recently restated the standard governing our review of a directed verdict as follows:

> We review a trial court's decision on a motion for directed verdict *de novo*, "applying the same standards as the trial court." ***Biscan v. Brown***, 160 S.W.3d 462, 470 (Tenn. 2005) (citing ***Gaston v. Tenn. Farmers Mut. Ins. Co.***, 120 S.W.3d 815, 819 (Tenn. 2003)). A

> directed verdict is appropriate "only when the evidence in the case is susceptible to but one conclusion." ***Childress v. Currie***, 74 S.W.3d 324, 328 (Tenn. 2002) (citing ***Eaton v. McClain***, 891 S.W.2d 587, 590 (Tenn. 1994)). We must "take the strongest legitimate view of the evidence favoring the opponent of the motion," allowing "all reasonable inferences in favor of the opponent of the motion," and disregarding "all evidence contrary to the opponent's position." ***Id.*** After assessing the evidence in this fashion, we will affirm the directed verdict only upon a determination "that reasonable minds could not differ as to the conclusions to be drawn from the evidence." ***Eaton***, 891 S.W.2d at 590.

Helton v. Glenn Enterprises, Inc. 209 S.W.3d 619, 624 (Tenn. Ct. App. 2006); ***Island Brook Homeowners Ass'n v. Aughenbaugh,*** No. M2006-02317-COA-R3-CV, 2007 WL 2917781, at *3 (Tenn. Ct. App. E.S., filed Oct. 5, 2007).

B. Liability of Employer for Hostile Work Environment Harassment

1. Faragher/Ellerth and the Availability of the Affirmative Defense

Officer Smith argues that the trial court erred in holding that the employer City could not be held vicariously liable because it established the affirmative defense set forth by the United States Supreme Court in the companion cases of ***Faragher v. City of Boca Raton***, 524 U.S. 775 (1998) and ***Burlington Industries, Inc. v. Ellerth***, 524 U.S. 742 (1998). We agree. Officer Smith brought her claim under the THRA, which provides that it is a discriminatory practice for an employer to "[f]ail or refuse to hire or discharge any person or otherwise to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, creed, color, religion, sex, age or national origin." Tenn. Code Ann. § 4-21-401(a)(1)(2005).[3]

The Tennessee Supreme Court recently examined a similar THRA claim against an employer and supervisor in ***Allen v. McPhee***, — S.W.3d. —, No. M2005-00202-SC-R11-CV, 2007 WL 4233321 (Tenn. Dec. 4, 2007). The ***Allen*** Court noted that the Tennessee legislature intended the THRA to be "coextensive with federal law," and stated that although we are not bound or limited by federal law, "the policy of interpreting the THRA coextensively with Title VII is predicated upon a desire to maintain continuity between state and federal law." ***Id.***, 2007 WL 4233321, at *6 (quoting ***Parker v. Warren County Util. Dist.***, 2 S.W.3d 170, 172 (Tenn. 1999)).

[3] Similarly, Title VII of the Civil Rights Act of 1964 states, "[i]t shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (2003).

Noting that "[i]t is well settled that both the THRA and Title VII prohibit hostile work environment sexual harassment," the Supreme Court in ***Allen*** restated the applicable law as follows:

> The United States Supreme Court developed the modern framework for determining an employer's liability for hostile work environment sexual harassment in the companion cases of ***Faragher v. City of Boca Raton,*** 524 U.S. 775 (1998), and ***Burlington Industries, Inc. v. Ellerth,*** 524 U.S. 742 (1998). Those cases held that "[a]n employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee." ***Faragher,*** 524 U.S. at 807; ***Ellerth,*** 524 U.S. at 765. There is, however, an important exception to the rule of vicarious liability:
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> > When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence . . . . The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.
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> ***Faragher,*** 524 U.S. at 807; ***Ellerth,*** 524 U.S. at 765. In accordance with the policy of maintaining the continuity of the THRA and Title VII, we have since adopted the vicarious liability rule and the ***Faragher/Ellerth*** defense. ***Parker,*** 2 S.W.3d at 176. When the harassing supervisor has not taken or instigated a tangible employment action against the employee, such as a termination, failure to promote, demotion, or undesirable reassignment, the employer may raise an affirmative defense to liability. ***Id.; Faragher,*** 524 U.S. at 808; ***Ellerth,*** 524 U.S. at 765-66. The affirmative defense requires the employer to establish: 1) that it took reasonable measures to prevent and correct discriminatory conduct; and 2) that the employee unreasonably failed to take advantage of these preventive and corrective measures. ***Id.****; see also* ***Faragher,*** 524 U.S. at 807; ***Ellerth,*** 524 U.S. at 765.

Allen, 2007 WL 4233321, at *6-7.

Thus, the initial inquiry in determining whether the ***Faragher/Ellerth*** defense is available to the employer is whether a "tangible employment action" has been taken against the employee. If there was a tangible employment action taken, the defense is unavailable. ***Id.*** In the present case, the record does not demonstrate that any tangible employment action was taken by the City or Sgt.

Grace against Officer Smith, nor does she contend that such an act was taken. The City is therefore entitled to assert the affirmative defense set forth in ***Faragher/Ellerth. Id.***

2. Application of the Faragher/Ellerth Defense

We now turn to the issue of whether the evidence presented, taken in the strongest legitimate view favoring the opponent of the motion, Officer Smith, and allowing all reasonable inferences in her favor, supports the conclusion that reasonable minds could not differ as to whether the City established its affirmative defense. "To avoid liability for sexual harassment committed by a supervisor an employer must prove: 1) that it took reasonable measures to prevent and correct discriminatory conduct; *and* 2) that the employee unreasonably failed to take advantage of these preventive and corrective measures." ***Allen,*** 2007 WL 4233321, at *9 (emphasis added). We conclude that reasonable minds could differ on the question of whether the City established the second prong of the defense: that Officer Smith unreasonably failed to take advantage of the preventative and corrective measures taken by the City. Therefore, the trial court erred in directing a verdict in the City's favor.

a. Reasonableness of the City's Preventive and Corrective Measures

The first prong of the ***Faragher/Ellerth*** defense requires the employer to demonstrate that it exercised reasonable care to both prevent sexual harassment and to correct sexual harassment that has occurred. ***Id.*** Regarding the employer's duty to exercise reasonable care to prevent sexual harassment before it occurs, the ***Allen*** Court provided the following guidance:

> [T]he presence of a properly disseminated, written anti-harassment policy is relevant to the determination of whether an employer exercised reasonable care . . . . Federal cases provide further guidance regarding an employer's duty to take reasonable steps to prevent harassment. It is widely accepted that the existence of an anti-harassment policy weighs heavily in favor of a conclusion that an employer has exercised reasonable care to prevent harassment. *See, e.g.,* ***Caridad v. Metro-North Commuter R.R.,*** 191 F.3d 283, 295 (2d Cir. 1999), *overruled on other grounds by* ***In re Initial Pub. Offerings Sec. Litig.,*** 471 F.3d 24, 42 (2d Cir. 2006); ***Brown*** [***v. Perry,*** 184 F.3d 388, 395 (4th Cir. 1998)], 184 F.3d at 395; ***Shaw v. AutoZone, Inc.,*** 180 F.3d 806, 811-12 (7th Cir. 1999); ***Kohler v. Inter-Tel Techs.,*** 244 F.3d 1167, 1180 (9th Cir. 2001). The mere existence of an anti-harassment policy, however, does not conclusively establish that an employer has taken reasonable steps to prevent sexual harassment. ***Hurley v. Atlantic City Police Dep't,*** 174

> F.3d 95, 118 (3rd Cir. 1999). On the contrary, an employer has the burden of establishing that anti-harassment policies are "reasonably designed and reasonably effectual." ***Brown,*** 184 F.3d at 396. An employer may meet this burden by demonstrating that its anti-harassment policy is reasonably published, contains reasonable complaint procedures, and is not otherwise defective. ***Frederick v. Sprint/United Mgmt. Co.,*** 246 F.3d 1305, 1314 (11th Cir. 2001).

Allen, 2007 WL 4233321, at *10.

The City proffered into evidence a copy of its written anti-harassment policy, enacted as part of the Chattanooga City Code in 1986. The City also presented the affidavit of Donna Kelley, its director of personnel, who stated as follows:

> The City began its sexual harassment awareness programs in December of 1987 with City employees required to attend the initial training. New employees are instructed on the City's sexual harassment policy during orientation and are required to sign a statement of their awareness of the City's policy. Each year the personnel department issues updates on sexual harassment laws through training programs[.]

The policy provides that an employee may make a complaint of sexual harassment to the employee's immediate supervisor, the department head, the equal employment opportunity officer, the City personnel director, or the mayor, and that "[e]mployees have the right to circumvent the employee chain of command in selecting which person to whom to make a complaint." Officer Smith testified that her training included the anti-harassment policy and that she understood that if she had a complaint she could go outside the chain of command to a person she felt it appropriate to go to. There is no evidence in the record that the City's anti-harassment policy or the City's efforts to publish and disseminate it were deficient, and Officer Smith does not contend that they were unreasonable or deficient. The City accordingly established that it had taken reasonable measures to prevent discriminatory conduct.

In addition to making reasonable efforts to prevent harassment, employers must exercise reasonable care to investigate, end, and otherwise correct sexual harassment after it occurs, as stated by the Court in ***Allen:***

> Federal case law indicates that the duty to correct sexual harassment requires an employer to take reasonable steps to end and investigate

> alleged harassment. *See, e.g.,* ***Weger v. City of Ladue,*** 500 F.3d 710, 723-24 (8th Cir. 2007); ***Hill v. Am. Gen. Fin., Inc.,*** 218 F.3d 639, 643 (7th Cir. 2000); ***Brown v. Perry,*** 184 F.3d 388, 396-97 (4th Cir.1999). An employer is not required to conduct a proceeding in the nature of a trial to investigate allegations of sexual harassment. ***Baldwin v. Blue Cross/Blue Shield of Ala.,*** 480 F.3d 1287, 1304 (11th Cir. 2007). Circumstances, however, may require an employer to conduct an "inquiry informally in a manner that will not unnecessarily disrupt the company's business, and in an effort to arrive at a reasonably fair estimate of truth." ***Id.*** Federal courts have found corrective measures inadequate primarily when the alleged harasser is not disciplined and harassment is allowed to continue. *See* ***EEOC v. Harbert-Yeargin, Inc.,*** 266 F.3d 498, 511 (6th Cir. 2001); ***Mota v. Univ. of Tex. Houston Health Sci. Ctr.,*** 261 F.3d 512, 525 (5th Cir. 2001).

Allen, 2007 WL 4233321, at *9.

In the present case, Officer Smith reported her sexual harassment allegations against Sgt. Grace to Ms. Kelley, the City's personnel director, on March 14, 2001. Ms. Kelley took Officer Smith's written statement and initiated an investigation nearly immediately. Officer Smith testified that the next day after her complaint, Sgt. Grace was placed on administrative leave with pay. Eventually, both the City's personnel department and the police department's Internal Affairs division conducted an investigation, and it appears they were done promptly – the personnel investigation was completed on or about April 4, 2001, and the internal affairs investigation was completed in May 2001. Officer Smith presented no evidence that could lead a reasonable person to conclude that the investigation of her complaint was not thorough and impartial. In fact, Officer Smith testified that she felt that the personnel department "had done a pretty good job."

Immediately after her complaint, Sgt. Grace was officially removed as Officer Smith's supervisor and did not supervise her again, except possibly on one occasion when he was filling in for another absent sergeant. Most importantly, there is no evidence that Sgt. Grace committed any further acts of sexual harassment against Officer Smith. Although she contends that the City did not move Sgt. Grace far enough away from her, and that she still saw him at the police station, Officer Smith did not present evidence that he ever spoke to or directly interacted with her again.[4] Because it is clear from the evidence presented that the City undertook an investigation to determine the truth of the harassment allegations, promptly removed Sgt. Grace from his supervisory duty over Officer Smith, and, most importantly, effectively ended the harassment, we conclude that the City's corrective actions in this case were reasonable as a matter of law. *See* ***Allen,*** 2007 WL 4233321, at

[4] At the time of the trial, Sgt. Grace had retired from the police department.

*10. The ***Allen*** Court held that while "disciplinary action taken against an alleged harasser is a relevant factor when determining the adequacy of an employer's corrective measures, this is not to say that an employer must necessarily discipline the alleged harasser to avoid liability. The application of this factor depends on the totality of the circumstances." ***Id.*** at *10, fn. 4. Considering the totality of the particular circumstances presented in this case, the fact that the City did not officially "discipline" Sgt. Grace, and instead placed him on leave, required him to obtain additional sexual harassment training, and transferred him to a different unit, does not alter our conclusion here.

b. Reasonableness of Officer Smith's Efforts to Take Advantage of Preventative and Corrective Measures

The second prong of the ***Faragher/Ellerth*** defense requires the employer to demonstrate that the employee unreasonably failed to take advantage of the employer's preventative and corrective measures. ***Allen,*** 2007 WL 4233321, at *9. The Tennessee Supreme Court in ***Allen*** and ***Parker***, 2 S.W.3d 170 (1999), and the U.S. Supreme Court in ***Faragher*** and ***Ellerth***, have made it clear that an evaluation of the employee's conduct in his or her efforts to take advantage of preventative and corrective measures is a requisite element in the analysis of whether an employer's effort to establish the affirmative defense to the general rule of vicarious liability is successful. *See also* ***Keeton v. Hill***, No. M1999-02272-COA-R3-CV, 2000 WL 1483208, at *5-6 (Tenn. Ct. App. M.S., filed Oct. 10, 2000); ***Crawford v. Thomason***, No. M1998-00926-COA-R3-CV, 2001 WL 329527, at *4 (Tenn. Ct. App. M.S., filed Mar. 28, 2001). In this regard, the ***Allen*** Court stated that "while proof that an employee failed to fulfill the corresponding obligation of reasonable care to avoid harm is not limited to showing an unreasonable failure to use any complaint procedure provided by the employer, a *demonstration of such failure will normally suffice to satisfy the employer's burden under the second element of the defense.*" ***Allen,*** 2007 WL 4233321, at *12 (quoting ***Faragher***, 524 U.S. 807-08) (emphasis added in ***Allen***)).

In granting both defendants a directed verdict, the trial court in the present case ruled as follows in its written order:

> [A]fter completion of all plaintiff's proof in the trial of this cause, the Chancellor finds that the plaintiff Sabrina Smith did prove that she was subjected to sexual harassment by the defendant, Phillip Grace, but that *she did not meet her factual burden of proof in this cause against the Defendant City of Chattanooga* because supervisory officials of the plaintiff took appropriate and prompt corrective action after the complaint of sexual harassment was made known to City officials as required by law.

(Emphasis added). We initially note that the language of the trial court's order incorrectly places the burden of proof regarding the affirmative defense on the plaintiff, as is seen from the italicized portion. The law is clear that the plaintiff retains the ultimate burden of proving all the elements of her claim, but that an employer asserting an affirmative defense to the general rule imposing vicarious liability in a hostile work environment sexual harassment case bears the burden of proving the two requisite elements of the defense. ***Faragher,*** 524 U.S. at 807; ***Ellerth***, 524 U.S. at 765; ***Allen***, 2007 WL 4233321, at *7.

While the trial court's order addresses the first prong of the ***Faragher/Ellerth*** defense, it is silent as to the second. The trial court made no finding regarding Officer Smith's efforts to take advantage of the employer's preventative and corrective measures. A review of the proof presented compels the conclusion that it is insufficient to support a directed verdict because reasonable minds could differ on the question of whether the City has established its affirmative defense and because the trial court made no finding of fact on this second prong of the defense. We therefore vacate the trial court's directed verdict in favor of the City.

C. Liability of Supervisor Under the THRA

Officer Smith also argues that the trial court erred in holding that Sgt. Grace was not individually liable for the harassing behavior under the THRA because he did not encourage the employer to engage in employment-related discrimination or prevent the employer from taking corrective action. The ***Allen*** Court, addressing the same issue, provided the following guidance:

> The THRA states that "[i]t is a discriminatory practice for a person or for two (2) or more persons to . . . (2)[a]id, abet, incite, compel or command a person to engage in any of the acts or practices declared discriminatory by this chapter." Tenn. Code Ann. § 4-21-301(2) (2005).
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> In applying this section, we have held that individual liability may exist under the common law civil liability theory of aiding and abetting. *See* ***Carr v. United Parcel Serv.,*** 955 S.W.2d 832, 836 (Tenn. 1997), *overruled on other grounds by* ***Parker,*** 2 S.W.3d at 176. The common law civil liability theory requires that "the defendant knew that his companions' conduct constituted a breach of duty, and that he gave substantial assistance or encouragement to them in their acts." ***Id.*** (quoting ***Cecil v. Hardin,*** 575 S.W.2d 268, 272 (Tenn. 1978)). Accordingly, imposing accomplice liability for a supervisor in a hostile work environment claim requires evidence that the supervisor encouraged the employer to engage in employment-

> related discrimination or prevented the employer from taking corrective action. ***Id.*** at 836.
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> In the present case, *[supervisor] McPhee denied most of Allen's allegations, but he did not try to inhibit or impair the investigation that was conducted by the TBR* . . . . In addition, McPhee did not discourage or prevent the State from taking remedial measures, as he accepted the sanctions that were imposed upon him.
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> * * *
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> As we said [in ***Carr***], "[a] supervisor ... may be individually liable for encouraging or preventing the employer from taking corrective action. Absent such allegations, [supervisor-defendants] [cannot] be held individually liable under a hostile work environment theory." ***Carr,*** 955 S.W.2d at 838. In sum, *we decline to extend individual liability to supervisors who participate in the behavior creating the hostile work environment absent a showing that the supervisor's conduct encouraged the employer to engage in employment-related discrimination or prevented the employer from taking corrective action*. Because the evidence did not satisfy this standard, we hold that the trial court properly granted summary judgment to McPhee on this issue.

Allen, 2007 WL 4233321, at *13 (emphasis added). The pertinent facts on this issue are functionally the same as in ***Allen***. In the present case, as in ***Allen***, the supervisor Sgt. Grace denied most of the allegations, but there is no evidence he tried to inhibit or impair the investigation, nor that he discouraged or prevented the City from taking remedial measures. At trial, Officer Smith admitted that she was aware of no facts that Sgt. Grace either encouraged or prevented the City from taking any corrective action to remedy the harassment. Nor does the evidence support the conclusion that Sgt. Grace, in the words of the statute, aided, abetted, incited, compelled or commanded a person to engage in any discriminatory act or practice. Therefore, under the authority of the THRA and ***Allen***, we are compelled to affirm the trial court's directed verdict in favor of Sgt. Grace.

IV. Conclusion

For the aforementioned reasons, the judgment of the trial court granting a directed verdict to the defendant City of Chattanooga is vacated and the case remanded for further proceedings. The judgment of the trial court granting a directed verdict to the defendant Sgt. Phillip Grace is affirmed. Costs on appeal are assessed one-half to the Appellant, Officer Sabrina Smith, and one-half to the Appellee, City of Chattanooga.

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SHARON G. LEE, JUDGE